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for actions taken during their term of office; several other cases against senior Government officials had been thrown out by the International Criminal Court for just that reason.

15. The warrant for President Al-Bashir's arrest was clearly part of a political strategy designed to put pressure on the Sudan and lacked legal grounds. Furthermore, the prosecutor's decision to pursue a charge of joint criminal enterprise set a dangerous precedent within international law and would lead to a loss of confidence in international justice. Indeed, the case brought against the President of the Sudan could be seen as the first of many in which some Western Powers would seek to violate the sovereignty of developing countries in the name of human rights. The African Union had concurred with the Sudan on that point by rejecting cooperation with the International Criminal Court.

16. Reform of the organs of the United Nations was critical to enable it to address new challenges confidently. Security Council reform was needed to improve transparency and democratic accountability but also to put an end to the continued encroachment by the Council on the functions and powers of the General Assembly and the Economic and Social Council. The rule of law at the international level must be in harmony with national laws; to that end, the provision of technical and capacity-building assistance to Member States urgently needed to be strengthened. Lastly, he welcomed the Organization's new administration of justice system and expressed the hope that its shortcomings might be addressed in the near future.

17. **Mr. Sharifov** (Azerbaijan) said that Azerbaijan was a party to all major international conventions, which, under its Constitution, automatically became part of domestic law. In the event of a conflict between domestic legislation and the provisions of a convention to which his country was a party, the latter took precedence. Promotion of the rule of law was a priority for his Government, which affirmed its commitment to an international order based on international law and the rule of law and supported the progressive development and codification of international law and standards.

18. Adherence to the rule of law was essential to the maintenance of international peace and security and the achievement of economic development and social progress. His delegation strongly supported the rule of law activities of the United Nations, especially the Rule of Law Coordination and Resource Group, and favoured the idea of convening a high-level meeting of the General Assembly on the rule of law.

19. Violations of international law were still too frequent and the political will to ensure consistent compliance too weak. Threats to the territorial integrity of States, including unlawful occupation and use of force by some States against others, continued to occur in violation of both international law and the obligations of Member States under the Charter. Existing mechanisms for monitoring and promoting compliance with international obligations needed to be made more effective. Security Council and General Assembly resolutions should be implemented without selectivity, and more should be done to address the major threats and challenges that undermined the international legal order and, in addition, generated a disregard for human rights. Impunity should never be allowed to prevail. Those responsible for breaches of international humanitarian law or international human rights law must be brought to justice.

20. **Mr. Charles** (Trinidad and Tobago) said that his delegation aligned itself with the statement made on behalf of the Rio Group. The promotion of the rule of law and agreement on a body of legally binding rules were indispensable to the achievement of lasting peace and security, good global governance and economic development. Without agreement on rules governing international conduct, small and vulnerable States would not enjoy sovereign equality with larger and more powerful ones.

21. Many States relied on United Nations assistance in the drafting of domestic legislation aimed at implementing international legal obligations, and in the training of their officials in diverse areas of international law. The Treaty Section of the Office of Legal Affairs and the United Nations Institute for Training and Research (UNITAR) did invaluable work in that regard. It was important for the United Nations Rule of Law Resource and Coordination Group and its supporting entities to be provided with adequate resources in order to fulfil their mandate. Trinidad and Tobago continued to make annual contributions to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which exposed officials and experts from Member States to the role of

international law in the maintenance of global peace and security.

22. International regulation was required for certain activities, making the establishment of the Arms Trade Treaty Preparatory Committee an important step towards preventing the diversion of conventional weapons to the illicit market. That activity caused increased criminal activity across borders and undermined the rule of law, as the perpetrators had no respect for the rule of law and were not always brought to justice in the absence of extradition treaties. Cooperation at the international level was required to rectify that.

23. A complementary feature of the rule of law was the promotion of justice at both the national and the international levels. The International Criminal Court was a beacon for victims of crime and impunity and complemented national criminal justice systems in bringing to justice criminals accused of violating international human rights and humanitarian law.

24. The primary responsibility in promoting the rule of law remained with Member States. The rule of law was an important pillar of democracy in Trinidad and Tobago, where many of the State's obligations under international conventions had been domesticated. The rule of law had also come to be seen as a means of facilitating access to the living and non-living resources of the State's exclusive economic zone and continental shelf. Trinidad and Tobago had concluded maritime boundary agreements based on the rules established under the United Nations Convention on the Law of the Sea and accepted the International Tribunal for the Law of the Sea as the body for settling disputes arising in connection with the Convention.

25. **Mr. Al Habib** (Islamic Republic of Iran) said that only through respect for the rule of law and justice could a secure, peaceful and prosperous world be realized and maintained. With respect to the report of the Secretary-General (A/65/318) and overall United Nations policies concerning the rule of law, his Government believed that those should be shaped in accordance with the principles enshrined in the Charter of the United Nations and relevant authoritative documents. It was also important to maintain a balanced and inclusive approach to the issue.

26. It was the sovereign right of each nation, protected by international law and the Charter, to establish its own model of the rule of law and to develop a legal and judicial system based on its cultural, historical and political traditions and needs. The international community and the United Nations could provide technical assistance at the request of Member States based on the needs and priorities they themselves identified.

27. One whole chapter of the Constitution of the Islamic Republic of Iran concerned the rights of the people and citizens, guaranteeing equal rights regardless of colour, race or language and equal protection of the law for both men and women in conformity with Islamic criteria.

28. Concerning the incorporation of international obligations in the domestic legal system, Iranian civil law clearly stipulated that the provisions of international agreements concluded between the Islamic Republic of Iran and other countries in accordance with the Constitution had the force of law. A procedure for ratification of, or accession to, an international treaty was specified in the Constitution.

29. The rule of law was not immune from misuse and abuse. National legislation that manifestly contravened the norms and principles of international law and violated the rights of other States devalued the concept of the rule of law. Unilateral and extraterritorial application of domestic law against other countries adversely affected it as well. Selectivity and double standards in international law must be rejected, since they undermined the very nature and objective of the rule of law.

30. The rule of law stood at the core of the United Nations, and the purposes and principles of the Charter could be fulfilled only in a law-based international order where all States were committed to refraining from the unlawful use or threat of force. The United Nations had been established mainly to save succeeding generations from the scourge of war, which had to be achieved by replacing the rule of force and power with the rule of law and justice.

31. The United Nations had a unique role in strengthening the rule of law, as it provided a key global platform for all States to engage in codification and progressive development of international law through multilateral diplomacy and negotiations. Equal opportunity for all sovereign States to participate was fundamental for the credibility and legitimacy of the outcomes of those negotiations. Host countries of the various United Nations headquarters had an obligation

to facilitate the presence of the representatives of Member States at United Nations meetings. It was a matter of serious concern that, in some cases, the representatives of Member States had been prevented by the host country authorities from participating in United Nations meetings because of political considerations.

32. He welcomed the new administration of justice system at the United Nations and expressed support for initiatives aimed at ensuring criminal accountability of United Nations officials and experts on mission. The Organization's staff needed to have access to an effective and fair system of internal justice and should be held accountable for any misconduct or criminal act committed.

33. The General Assembly's role in the progressive development and codification of international law needed to be fully respected by other United Nations organs, particularly the Security Council. The Security Council had a primary responsibility for maintaining international peace and security while exercising its powers in accordance with the purposes and principles of the Charter and refraining from interfering in the internal affairs of Member States. Decisions made on the basis of unauthentic information, politically motivated analysis or the narrow national interest priorities of some of its permanent members could undermine the Council's credibility and reputation.

34. **Mr. Ben Lagha** (Tunisia) said that although it was useful for the purposes of the Committee's current debate to draw a distinction between the rule of law at the national and international levels, in fact the two levels could not be dissociated from one another. The principle of the rule of law was enshrined in his country's Constitution: the provisions of international treaties to which Tunisia was a party became a source of binding law at the national level and had pre-eminence over domestic laws. Judges were obliged to uphold the law established under international conventions by invoking it directly in domestic courts. Tunisia had become a party to more than 16 international instruments in the previous three years, including, most recently, the Convention on Cluster Munitions and the International Convention for the Suppression of Acts of Nuclear Terrorism.

35. The gaps between the existence of international norms and their effective implementation at the national level and between the existence of a comprehensive international legal framework and low adherence by States to the relevant treaties had to do in some cases with lack of resources, but in others it was the result of insufficient political will or a selective approach to implementation. Strengthening the rule of law required respect for the international obligations and adherence to the standards established in those areas, without exception or distinction. All Member States should therefore respect the resolutions of the Security Council, many of which continued to go unheeded.

36. His delegation supported the efforts of the Rule of Law Unit and the Rule of Law Coordination and Resource Group to maintain an ongoing dialogue among Member States aimed at strengthening the rule of law at the national and international levels; it also endorsed the idea of organizing a high-level meeting of the General Assembly on the topic.

37. **Ms. Haile** (Eritrea) said that clear rules, adherence to those rules and an effective multilateral system to prevent or sanction violations were preconditions for lasting international peace and security. Strengthening the rule of law at all levels would help to prevent the arbitrary exercise of government power in international relations among States. The General Assembly should play a leading role in that regard. However, the international community should not replace national authorities or seek to usurp their primary role in establishing and strengthening the rule of law. The United Nations had an important role to play in ensuring that all Member States were subject to the same standards and that such standards were not applied in a selective or arbitrary manner.

38. Her Government attached great importance to the promotion of peaceful settlement of disputes and was of the view that strengthening the rule of law would also bolster economic and social development and government accountability at the international and national levels.

39. **Mr. Olukanni** (Nigeria) welcomed the Secretary-General's report (A/65/318), noting that the rule of law activities mentioned therein covered all the regions of the world. Since the return of the rule of law to Nigeria a decade earlier, his country had striven to maintain and further develop democracy. A justice system was a complex, interlocking system of various institutions; effective reform of any one part required

reform of all the other parts also. His Government had conducted reforms of its judiciary and legislative branches and had recently enacted bills on criminal justice and administration aimed at consolidating criminal procedure laws, reducing administrative delays and providing for more humane treatment of prisoners. The Constitution of Nigeria was recognized as playing a key role in the implementation of the rule of law, including, inter alia, the ensuring of free and fair elections.

40. The rule of law at the international level was of the utmost importance in achieving the objectives of peace and security as well as global development. He agreed that strengthening coordination and the quality of United Nations rule of law activities was a long-term endeavour. Bilateral, regional and international cooperation were all intrinsically linked. Nigeria actively participated in all such levels of cooperation: at the national level, for instance, his Government sent Nigerian lawyers and judges to other countries to help strengthen their judicial systems. The United Nations had an important facilitating role to play in that process. The international community in general must continue to build national capacity in order to combat impunity and strengthen the rule of law.

41. **Archbishop Chullikatt** (Observer for the Holy See) said that the rule of law was the bedrock for development, peace and security. In order for the rule of law to promote true justice, however, a better understanding of the nature of law and justice was needed. The law must serve and protect the common good of the human family. It must also incorporate natural moral law, which introduced a crucial element of human reason to law-making and law enforcement and connected the rule of law to the seeking of truth. Legislative and judicial bodies too often focused only on the empirical perception of human circumstances and on procedural questions concerning the creation and application of law. As a consequence of such positivistic and utilitarian views of the law, private interests or wishes were transformed into legislation that conflicted with social responsibility and duties, resulting in rule by law rather than rule of law and leading to the flawed conclusion that what became legal was therefore just and moral.

42. At the international level, promotion of the rule of law had advanced in recent decades. The importance of international trade and development had led to recognition of the need for just and effective standards and norms that would further enhance international development. Likewise, international labour markets and human migration had both received greater attention from the international community, which had promoted laws that protected the dignity of workers and allowed migrants and their communities to enjoy full legal protections. Continued work and commitment were needed, however, in order create a more just international order. The international community should reform the mandates and rules of the main multilateral financial bodies with a view to ensuring the fair participation of all countries in world financial governance. To that end, the financial institutions should be more closely linked to the work of the General Assembly.

43. The international criminal justice system had seen great progress in the previous year. More States had ratified the Rome Statute of the International Criminal Court, and the Court's ability to hold individuals accountable for the worst crimes against humanity had been enhanced. Efforts to ensure that the Court promoted the rule of law and greater peace and justice must continue, however. While ensuring global and national governance through the rule of law, international leaders and civil authorities must continue to work to remove the perceived conflict between peace and justice and to foster a broader vision that took into account political, social, economic and legal forms of justice and that served the common good.

44. At the national level, efforts to promote the rule of law were hampered by corruption, social and political instability and the lack of resources to implement judicial systems. Partnerships with civil society organizations that provided education and social services based on sound principles of the rule of law were vital to providing the cultural foundation upon which legal systems could be built.

45. With the increasing codification of international legal standards, more States had incorporated those established by international human rights treaties into national legislation. However, the scope of some treaty bodies had expanded beyond the spirit and goals of the relevant treaties and the intent of the States that had adopted them, thereby undermining the international treaty system. In the worst instances, such bodies had actively promoted an interpretation of international human rights standards that ran counter to the fundamental duty of law: to protect life. Treaty bodies must respect the role of States in negotiating and implementing human rights standards and avoid expanding their activities in respect of such standards into areas that went beyond their scope and intent.

46. Individuals responsible for the development of law had a responsibility to ensure that their efforts contributed to the common good by protecting the legitimate interests of every member of society and by ensuring that laws upheld the dignity of the human person, fostered social unity, protected life, promoted the rehabilitation of offenders, restored victims both physically and spiritually and increased trust and understanding among peoples and nations. In the final analysis, that was the aim of the rule of law.

47. **Mr. Young** (Observer for the International Committee of the Red Cross (ICRC)) said that his organization, as a result of its daily work in armed conflicts around the globe, was acutely aware of the need to ensure the effective rule of law at the national level. Only a strong legal framework with appropriate sanctions could ensure that those who breached international humanitarian law would be held accountable and deter the commission of further offences. His organization was actively promoting the rule of law at both the national and the international levels through direct technical assistance to States for the drafting of domestic legislation and through the organization of regional and international meetings that served as forums for the exchange of view between States on the latest developments in international humanitarian law. It had prepared a number of tools to support States in implementing international humanitarian law treaties, including a database of national legislation, and had recently published a manual on domestic implementation of international humanitarian law and a set of guiding principles on the protection of children in situations of armed conflict.

48. In October 2010 the International Committee of the Red Cross would host the third Universal Meeting of National Committees on International Humanitarian Law, where officials from more than 100 States would discuss the important role of domestic law in preventing and responding to serious violations of international humanitarian law. ICRC was also working with various regional and international organizations to encourage implementation of international humanitarian law and enhance the protection of those affected by armed conflict through greater adherence to the rule of law.

49. **Mr. Civili** (Observer for the International Development Law Organization (IDLO)) said that his organization had recently completed the transition to a new governance structure, which had enabled it to refocus its strategic objectives as a catalyst for legal and institutional change and confirm the validity of its mandate and working methods revolving around a multi-stakeholder approach, national ownership, a vision of itself as an enabler and an effort to privilege South-South cooperation.

50. His organization had published the results of the research it had been conducting on building State institutions in post-conflict settings and legal empowerment in a wide range of areas. IDLO looked to research primarily as a guide for action. For instance, in Afghanistan, the organization promoted judicial reform and legal defence services for the poor, and it had established a unit within the Attorney General's office targeting violence against women. In Aceh, it had initiated a project on reducing emissions from deforestation and degradation. Together with UNDP and the Joint United Nations Programme on HIV/AIDS (UNAIDS), IDLO had worked on a legal services toolkit for people living with HIV and projects in selected countries to provide those services. The organization had also developed a comprehensive programme on legal preparedness for climate change that had met with considerable interest from the Alliance of Small Island States.

51. IDLO had made concluding or reinforcing partnerships a key part of its strategies. It participated actively in discussions and events sponsored by the United Nations Rule of Law Unit and increasingly focused its partnerships with other United Nations entities on peacebuilding, with special attention to the rule of law in countries emerging from conflict on the Peacebuilding Commission's agenda.

52. At the regional level, one of the organization's priorities was to translate into effective action the agreement it had concluded with the African Union. The proposed strategy would respond to the Union's immediate capacity-building and institutional development needs in the implementation of the African Peace and Security Architecture and would reinforce the Union's conflict prevention and peacebuilding capacities for the long term.

53. Turning to the Secretary-General's report (A/65/318), he said that his organization concurred with the findings that an incremental approach to policy and institutional development by Member States was most effective in promoting the implementation of international standards. Similarly, it shared the view that capacity-building, the development of local and

regional practices and the formalization of customary practices were often the most constructive ways forward. The development of tools for measuring the effectiveness of rule of law technical assistance was also a priority for IDLO, whose results-based management system and framework for measuring results could inform efforts in that regard. IDLO also supported the approach of furthering national strategies for justice and rule of law reform and shared the view that informal justice systems could play an important role in improving the rule of law internationally. A number of IDLO publications on that subject were available. With respect to the pilot initiative to organize unified rule of law training to enhance staff capacity to implement system-wide approaches to rule of law assistance, his organization was prepared to put its extensive experience in rule of law training at the service of that effort.

54. Referring to the results of Security Council debates on the rule of law and the outcome of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, which explicitly acknowledged the contribution of the rule of law to socio-economic development, IDLO saw those as validating its comprehensive approach to the rule of law and its holistic concept of human progress, which encompassed both security and socio-economic dimensions. The international reactions to those events showed increased recognition of the need for tools to bridge both ends of the security-development spectrum. His organization believed the rule of law to be among the most effective tools in that regard. The time was ripe for the United Nations to hold a high-level event of the General Assembly on the rule of law in 2011 as proposed in the Secretary-General's report.

Agenda item 86: The scope and application of the principle of universal jurisdiction (A/65/181)

55. **Mr. Al Habib** (Islamic Republic of Iran), speaking on behalf of the Movement of Non-Aligned Countries, said that the Movement, while respecting universally recognized principles concerning the administration of justice, firmly believed that the principles enshrined in the Charter, particularly the sovereign equality of States and non-interference in internal affairs, should be strictly observed in any judicial proceedings. The exercise of criminal jurisdiction over high-ranking officials entitled to immunity under international law before the courts of other States violated the principle of sovereignty. The Movement was particularly concerned about the political and legal implications of the invocation of universal jurisdiction in violation of the principle of immunity of State officials against some member countries. In that regard, it noted that the African Union, while reiterating its commitment to fight impunity, had called for immediate termination of all pending indictments initiated in blatant abuse of the principle of universal jurisdiction.

56. Although universal jurisdiction could be a tool to prosecute the perpetrators of certain serious crimes under international treaties, there was some controversy about the range of the crimes to which it applied and the conditions for its application. The Non-Aligned Movement cautioned against unwarranted expansion of the crimes considered to fall under universal jurisdiction. In its discussions on how to prevent misapplication of the principle, the Committee could draw upon the judgments of the International Court of Justice and the work of the International Law Commission. The Movement stood ready to share information and to consider all options and mechanisms to ensure that proper application of the principle served the interest of justice without hampering the sovereign rights of States.

57. **Ms. Quezada** (Chile), speaking on behalf of the Rio Group, said that universal jurisdiction was an exceptional institution of international law allowing for the exercise of criminal jurisdiction in order to combat impunity. International law thus established the framework for its application. Universal jurisdiction should not be confused with the international criminal jurisdiction exercised by international criminal tribunals or with the obligation to extradite or prosecute (*aut dedere aut judicare*).

58. Although the Committee was still at a preliminary stage in its work, the information provided by States offered an opportunity to identify points of agreement and issues requiring further examination. It should approach the topic from a strictly legal point of view and base its debate exclusively on the parameters and foundations of international law. The Committee should explore the possibility of establishing a working group on the issue, without, however, duplicating the work of other United Nations entities, in particular the International Law Commission.

59. **Mr. Katemula** (Malawi), speaking on behalf of the African Group, said that the Group was gravely concerned about the abuse of the principle of universal jurisdiction. In applying the principle, it was important

to respect other international norms, such as the sovereign equality of States and the immunity of officials under customary international law, a principle recently reaffirmed by the International Court of Justice. In that light, the African Group insisted that arrest warrants issued by foreign courts against sitting African Heads of State and Government or other high-ranking officials on whom international law conferred immunity should be vacated and any such prosecutions dropped.

60. There was as yet no generally accepted definition of universal jurisdiction and no agreement on which crimes, other than piracy and slavery, it should cover or on the conditions under which it would apply. If few States had responded with information about their practice on universal jurisdiction, it was because the principle hardly existed in most domestic jurisdictions. Those non-African States that had justified their arbitrary and unilateral exercise of universal jurisdiction on the basis of customary international law should remember that, according to the precedent of the International Law Court of Justice, a State relying on a purported international custom must demonstrate that the alleged custom had become so well established as to be legally binding on the other party.

61. The call for clarification of the scope and application of the principle of universal jurisdiction should not be taken to mean that the African States were not committed to the fight against impunity. African States had supported the establishment of the ad hoc tribunals for Rwanda and Sierra Leone, and the majority of African States were parties to the Rome Statute of the International Criminal Court. Many had ratified optional protocols to human rights instruments permitting individual complaints or grievance procedures. In addition, the Constitutive Act of the African Union accorded the Union the power to intervene in the affairs of its member States in situations of genocide, war crimes and crimes against humanity.

62. Nor were the African countries alone in their concerns; what they and other like-minded States were demanding was for the international community to adopt measures to put an end to the abuse and political manipulation of the principle of universal jurisdiction. In the absence of a clear definition and agreement as to the scope of application of the principle, chaos would result if States or domestic tribunals arrogated to themselves the power to make international law to suit parochial national interests.

63. **Mr. Morrill** (Canada), speaking on behalf of the CANZ countries (Australia, Canada and New Zealand), said that universal jurisdiction was a long-established and important principle of international law. Universal jurisdiction allowed any State to exercise criminal jurisdiction on behalf of the international community over individuals responsible for the most serious crimes of international concern, regardless of where those crimes were committed or the nationality of the accused. It was in the interest of all members of the international community to ensure that such crimes were suppressed and that their perpetrators did not enjoy impunity.

64. The heart of the debate was not the meaning of universal jurisdiction but the competing jurisdictions it created. Ideally, investigation and prosecution should take place in a State with a strong nexus to the relevant conduct. Territorial States were best placed to gather evidence, interview witnesses and enforce sentences. The CANZ countries therefore called upon all States to ensure that the most serious crimes of international concern were covered in their domestic laws and that effective jurisdiction could be exercised when the crimes were committed on their territory or by their nationals. The State in the best position to prosecute should do so, and other States should provide all possible cooperation and support. Moreover, States should provide practical assistance to develop the capacity of domestic criminal justice systems to investigate and prosecute grave crimes.

65. In reality, however, many perpetrators went unpunished for a number of reasons, including the movement of accused persons across international borders and a lack of resources to undertake complex and often controversial investigations and prosecutions. In such situations, universal jurisdiction was an important complementary mechanism. The CANZ group encouraged all States, consistent with their international obligations and domestic law, to assist national courts in prosecuting serious international crimes.

66. It was of paramount importance that universal jurisdiction should be exercised in good faith and in a manner consistent with other principles of international law. Moreover, the exercise of universal jurisdiction often entailed formidable practical problems. Preferably, then, there should be a link between the offence and the forum State, such as the presence of

the accused or the presence of evidence on the territory of the forum State.

67. There was still disagreement over the scope of application of universal jurisdiction, but that question should not be confused with the equally important but separate issue of immunity from prosecution. The CANZ countries urged that the dialogue on universal jurisdiction should not be taken over by a discussion of immunity, but should focus on ensuring that no perpetrator of the most serious crimes of international concern should go unpunished.

68. **Mr. Tag-Eldin** (Egypt) said that the principle of universal jurisdiction, deriving from international conventions relating to genocide, war crimes, crimes against humanity, slavery and torture, was an important means of ensuring that those who committed such heinous crimes were brought to justice. Their exceptional gravity made the suppression of such crimes a matter of concern to all members of the international community. It was a well-established principle that primary responsibility for investigation and prosecution of the crime rested with the State where the crime was committed. However, universal jurisdiction helped to cover jurisdictional gaps and could act as a deterrent.

69. Nonetheless, controversy remained concerning the range of crimes to which the principle applied and the conditions for its application. Identifying its scope and limits was important in order to arrive at a balance between avoiding impunity and preserving amicable relations among States. Those applying the principle of universal jurisdiction should avoid abuse, selectivity, double standards or politicization. Egypt reiterated its support for the various decisions adopted by the African Union expressing grave concern over the abuse of the principle, particularly in respect of African leaders and officials in violation of the principle of immunity. His delegation welcomed the views expressed by others regarding the importance of exercising jurisdiction in good faith and in full conformity with other rules of international law.

70. **Ms. Rodríguez-Pineda** (Guatemala) said that universal jurisdiction, a criterion for attributing jurisdiction, was a fundamental procedural tool for combating impunity for the most serious crimes of concern to the international community. However, its application was limited, not only in terms of the crimes to which it applied, but also in being subsidiary and applicable strictly within the framework of international law. The Guatemalan Penal Code allowed for universal jurisdiction by providing that extraterritorial jurisdiction could be exercised in the case of crimes committed outside the territory of Guatemala that were punishable under conventions to which Guatemala was a party. There would no doubt be intense debate over whether universal jurisdiction was based on treaty law or international customary law.

71. An important aspect of the Committee's work was to determine which crimes were covered by universal jurisdiction, since there were considerable differences of opinion in that regard. Without attempting to draw up an exhaustive list, her delegation wished to emphasize that the crimes identified should be serious crimes of the greatest concern to the international community; that category was not necessarily equivalent to "international crimes", a vague term that was used to refer either to crimes defined in international conventions or to crimes subject to the jurisdiction of an international tribunal. Nor should universal jurisdiction be confused with the international criminal jurisdiction exercised by international tribunals, such as the International Criminal Court, or with the obligation to extradite or prosecute (*aut dedere aut judicare*), which could be based on a different form of jurisdiction and could apply to crimes other than those covered by universal jurisdiction.

72. It should be borne in mind that it was national courts that applied universal jurisdiction and considered which crimes justified it, to what extent the court was obligated to exercise it, what competence the court had and which law should apply. While seeking to combat impunity by strengthening the mechanisms of accountability, the international community needed to achieve greater standardization in the use and application of universal jurisdiction in order to avoid abuses.

73. The diversity in the responses from States reflected in the Secretary-General's report (A/65/181) underlined the need to develop a United Nations stance on universal jurisdiction. The Committee should once again request a report from the Secretary-General with contributions from Member States and should establish an open-ended working group to consider that report and discuss the following points: the sources of universal jurisdiction; the crimes to which it applied; the priority or subsidiarity of universal jurisdiction; the

relationship with the *aut dedere aut judicare* rule; the permissibility of trial *in absentia*; the requirement of links with the forum State; exceptions to universal jurisdiction; mechanisms to strengthen cooperation and overcome impediments to the exercise of jurisdiction; and, lastly, the title of the agenda item, which incorrectly referred to universal jurisdiction as a "principle".

74. **Mr. Nikolaichik** (Belarus) said that his delegation recognized the importance of the principle of universal jurisdiction as a means of realizing the desire of the international community to prevent impunity for crimes against humanity and other serious crimes. The concept of universal jurisdiction was not explicitly contained in his country's domestic law. Nevertheless, in its legal doctrine universal jurisdiction was understood as the possibility for a State to prosecute serious crimes regardless of where they were committed or the nationality of the perpetrator or the victim. Unlike other forms of jurisdiction, which were based on the circumstances of the crimes, universal jurisdiction was based on the universal condemnation of international crimes that harmed the international community as a whole.

75. Agreement needed to be reached on a list of crimes to which the principle of universal jurisdiction applied. In addition to piracy, Belarus considered it appropriate to include crimes against peace, war crimes and crimes against humanity in that list. The perpetrators of those crimes could be prosecuted under the provisions of the Belarus Criminal Code and those of the international conventions to which Belarus was a party. In addition, the Belarus Criminal Code allowed for the extraterritorial prosecution of other serious crimes, such as genocide, the use of weapons of mass destruction and human trafficking, among others, as defined in binding international agreements to which Belarus was a party, independent of the criminal law in force in the country where the crime had been committed. A mandatory condition for bringing individuals accused of those crimes to justice was the absence of a conviction for those crimes in another State.

76. Belarus applied extraterritorial jurisdiction only with respect to crimes specified in the relevant international agreements to which it was a party, and it considered a treaty-based approach to universal jurisdiction most appropriate at the current stage. The desire to promote the principle of universal jurisdiction should be balanced against the degree to which States were prepared to implement it. In exercising universal jurisdiction, it was of the utmost importance to respect the principles of the sovereign equality of States and non-interference in internal affairs enshrined in the Charter of the United Nations and to ensure the rule of law. It was also important to rid the principle of universal jurisdiction of shortcomings resulting from the use of double standards, the lack of functioning international cooperation mechanisms, the absence of a clear list of crimes to which the principle would apply and the application of the principle to individuals in possession of privileges and immunities.

77. Belarus saw value in some of the work already done on the legal aspect of the principle, such as the Princeton Principles of Universal Jurisdiction, in particular as regards the list of crimes covered by it. It was to be hoped that the International Law Commission would conduct an in-depth and impartial study of the principle and the stated positions of States in the context of its examination of the obligation to extradite or prosecute (*aut dedere aut judicare*), which was closely related to the concept of universal jurisdiction.

78. **Mr. Rodríguez** (Peru) said that the considerable number of States from all continents responding to the Secretary-General's request for information demonstrated that the topic of universal jurisdiction was of global importance. From those responses and the debate on the item the following points could be deduced concerning universal jurisdiction: it was a basis of jurisdiction enabling States to punish certain serious crimes defined by international law; it must be exercised in conformity with international law, in particular human rights law; it was complementary to other bases for jurisdiction; it differed from the obligation *aut dedere aut judicare* and from international criminal jurisdiction, which was exercised by international tribunals; and it was an indispensable tool for combating impunity.

79. There appeared to be differences of opinion, however, on the crimes to which it applied; the source of law for each crime; which conventions provided for the exercise of universal jurisdiction; how to coordinate concurrent jurisdictions; and whether a link with the forum State (such as the presence of the accused in the State's territory) was required.

80. The item might need to be narrowed to focus on the criminal responsibility of the individual, to the exclusion of civil liability. His delegation supported the formation of a working group of the Sixth Committee to identify the points of agreement and the areas where further study was required in order to reconcile the diversity of views. It could usefully draw upon the work done by the International Law Commission on related topics, such as the obligation to extradite or prosecute (*aut dedere aut judicare*) and the immunity of State officials from foreign criminal jurisdiction, and by other United Nations entities on universal jurisdiction as a tool for combating impunity.

The meeting rose at 1 p.m.